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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/581,196	10/12/2006	David M. Dixon	132728.00016	8167
43755	7590	10/15/2013		
DALE F. REGEIMAN Attn: IP Docket QUARLES & BRADY, LLP ONE SOUTH CHURCH AVENUE AVE, STE. 1700 TUCSON, AZ 85701-1621			EXAMINER MACAULEY, SHERIDAN R	
			ART UNIT 1653	PAPER NUMBER
			NOTIFICATION DATE 10/15/2013	DELIVERY MODE ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID M. DIXON

Appeal 2012-003393
Application 11/581,196
Technology Center 1600

Before JEFFREY N. FREDMAN, ERICA A. FRANKLIN, and SHERIDAN K. SNEDDEN, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) involving claims to a binder composition and process for direct compression of poorly compressible drugs into tablets. The Patent Examiner rejected the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

Claims 9-11 and 19 are on appeal. Claim 9 is representative and reads as follows:

1. A method to treat a patient having a wound area, comprising the steps of:

providing a plurality of epidermal and/or dermal cells;
providing a wound care dressing comprising a first nonwoven blanket formed from fibers consisting of a first water soluble saccharide and a second nonwoven blanket formed from fibers consisting of a second water soluble saccharide, ***wherein said first saccharide has a first rate of dissolution in water, and wherein said second saccharide has a second rate of dissolution in water, wherein said first rate of dissolution is greater than said second rate of dissolution;***
disposing said plurality of epidermal and/or dermal cells in said wound care dressing;
covering said wound area with said wound care dressing.

(Emphasis added.)

The Examiner rejected the claims as follows:

- claims 9 and 11 under 35 U.S.C. § 103(a) as unpatentable over Dimoudis,¹ Fuisz,² and Torr;³
- claims 9-11 under 35 U.S.C. § 103(a) as unpatentable over Dimoudis, Fuisz, Torr, and Inlow;⁴
- claims 9, 11, and 19 under 35 U.S.C. § 103(a) as unpatentable over Dimoudis, Fuisz, Torr, and Bay.⁵

OBVIOUSNESS

The Examiner found that Dimoudis taught a method to treat a patient having a wound area comprising providing a plurality of epidermal and/or dermal cells and placing the plurality of cells on a wound area with an appropriate dressing, such as a hydroactive dressing. (Ans. 5.) The

¹ US Patent No. 5,980,888 issued to Nikolaos Dimoudis et al., Nov. 9, 1999.

² US Patent No. 4,855,326 issued to Richard C. Fuisz, Aug. 8, 1989.

³ US Patent No. 3,070,095 issued to David Torr, Dec. 25, 1962.

⁴ US Patent No. 6,048,728 issued to Duane Inlow et al., Apr. 11, 2000.

⁵ US Patent No. 5,064,652 issued to Michael Bay, Nov. 12, 1991.

Examiner found that Dimoudis did not specifically teach using a protective dressing comprising two nonwoven blankets, each formed of fibers consisting of water soluble saccharide having different rates of dissolution in water. (*Id.* at 5-6.)

The Examiner found that Fuisz taught a wound dressing comprising a water-soluble nonwoven blanket formed from fibers consisting of saccharides such as sucrose, glucose, lactose and cellulosic materials. (*Id.* at 6.) The Examiner also found that Torr taught multi-ply dressings that may be applied to wounds. (*Id.*) The Examiner found that Torr taught a dressing that may comprise nonwoven cellulose fibers, wherein the fiber of the two layers may vary so that “one layer is more water soluble than another layer (i.e., the ply, a nonwoven felted sheet, that is closest to the subject to which it is applied is more water soluble than the outer ply, which may be thicker or comprised of a different material....” (*Id.*)

According to the Examiner, a person of ordinary skill in the art at the time the invention was made would have been motivated to use the hydroactive dressing of Fuisz in the method of Dimoudis because Dimoudis taught that any dressing, including hydroactive dressings may be used. (*Id.* at 6-7.) Additionally, according to the Examiner:

One would further have been motivated to combine the teachings of Dimoudis and Fuisz with the teachings of Torr to use two types of nonwoven blankets, each with a different solubility in water, because Torr teaches that the use of multiple layers in a dressing, such as a body touching layer, a water absorbent layer of water-soluble polysaccharide, and a water-impervious outer layer, can be useful in a wound care dressing to absorb wound fluids and prevent their leakage from the dressing (col. 1, lines 41-50, col. 4, lines 50-56).

(*Id.* at 7.)

Appellant contends, among other things, that one of ordinary skill in the art following the teachings of Torr would find no motivation to use a wound care dressing comprising a first and second nonwoven blankets formed from fibers consisting of a first and second water soluble saccharides, wherein the first saccharide has a rate of dissolution that is greater than that of the second. (App. Br. 9.) According to Appellant:

Torr teaches a multi-ply napkin comprises three layers, including a body-touching sheet, a water-impervious sheet, and an intermediate layer, wherein at least two of those layers are non-water soluble layers. Col. 1 at Lines 41-50. “The body-touching ply is a thin, soft, absorbent cellulose-type sheet.” Col. 1 at Lines 51-53. Torr further teaches that this body-touching sheet must retain strength when wet. More specifically, Torr requires that the body-touching sheet comprise “sufficient wet strength to retain its continuity and not tear while in the set state on the wearer.” Appellant trusts the Board will appreciate that Torr’s body-touching sheet cannot be formed from a water soluble material. Such a water soluble material clearly could not maintain the requisite “wet strength to retain its continuity ...”.

“The water-impervious ply likewise can be composed of a cellulose-type sheet such as used for the body-touching ply ... Water-imperviousness is imparted to this sheet by application to one or both sides of it of a water-repellant coating that is inert or harmless to the skin of the wearer.” Col. 2 at Lines 10-20. Torr clearly teaches a non-water soluble water-impervious ply.

(App. Br. 9.)

The Examiner responds that “[t]he Torr reference is relied upon solely for teaching that a dressing can comprise a number of layers, one of which is a water-soluble polysaccharide layer.” (Ans. 15.)

We agree with Appellant that the Examiner has not established a prima facie case of obviousness. While Torr provides a motivation to add an additional layer to the dressing of Fuisz, what is missing from the Examiner's rejection is some teaching or suggestion to motivate a skilled artisan to provide such layers, i.e., nonwoven blankets, wherein the first nonwoven blanket is formed from fibers consisting of a first water soluble saccharide and the second nonwoven blanket is formed from fibers consisting of a second water soluble saccharide, wherein the rate of dissolution in water of the first water soluble saccharide is greater than that of the second water soluble saccharide, as required by independent claim 1. *See In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988)(A conclusion that the claimed subject matter is prima facie obvious must be supported by evidence that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention.).

Accordingly, we reverse the obviousness rejection of independent claim 9 and dependent claim 11 over Dimoudis, Fuisz, and Torr.

Because the Examiner relied on the combination of Dimoudis, Fuisz, and Torr as teaching the elements of independent claim 9 for each of the rejections (*see* Ans. 8-17) we also reverse the rejection of claims 9-11 over Dimoudis, Fuisz, Torr, and Inlow, and the rejection of claims 9, 11, and 19 over Dimoudis, Fuisz, Torr, and Bay.

Appeal 2012-003393
Application 11/581,196

SUMMARY

We reverse each of the obviousness rejections.

REVERSED